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E.O. 11652: N/A
TAGS: SHUM, AR, PINS
SUBJECT: GOA FACES DECISION IN TIMERMAN CASE

ACTION: SECSTATE WASH DC

INFO: USCINCSO QUARRY HTS CZ

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SUMMARY: ~~XXXXXXX~~ SINCE THE RECENT SUPREME COURT DECISION DIRECTING THE RELEASE FROM EXECUTIVE (PEN) DETENTION OF FORMER LA OPINION PUBLISHER JACOBO TIMERMAN EXCPLICITLY AVOIDED THE ISSUE OF THE GOVERNMENT'S AUTHORITY TO CONTINUE HIS DETENTION UNDER THE TERMS OF THE ACTA INSTITUTIONAL OF JUNE 18, 1976. TIMMERMAN's LAWYERS ~~XXXX~~ PLAN TO PLACE THIS ISSUE INTO THE COURTS NEXT WEEK (AUGUST 7). TIMERMAN'S LEGAL CASE APPEARS FAIRLY STRONG. TO DATE, THE GOVERNMENT HAS NOT RESPONDED TO THE JULY 20TH SUPREME COURT ORDER. IT IS FACED WITH A NUMBER OF SOLUTIONS WHICH WILL EITHER BE UNPOPULAR WITHIN THE ARMED FORCES OR TO WORLD OPINION. THESE RANGE ~~XXXXXXX~~ FROM RELEASING TIMERMAN IN RESPONSE TO THE

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POL:FAHarris/bv.	8-2-78	276	POL:AGFreeman

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COURT'S ORDER TO ISSUING A NEW PEN DECREE CHARGING HIM ANEW WITH THE FAMILY'S GOA LINKS TO SUBVERSION. [redacted] GUESS IS THAT THEY WILL ALLOW TIMERMAN TO CONTINUE TO LITIGATE HIS CASE AND POSTPONE THE DECISION. END SUMMARY.

1. SUPREME COURT'S DECISION -----

THE SUPREME COURT'S RECENT DECISION EXPLICITLY SKIRTED THE ISSUE REGARDING TIMERMAN'S DEPRIVATION OF LIBERTY UNDER THE ACTA INSTITUTIONAL. THE COURT FOCUSED ONLY ON THE REASONABLENESS OF TIMERMAN'S CONTINUED DETENTION UNDER THE PODER EJECUTIVO NACIONAL (PEN) DECREE UNDER WHICH HE WAS LEGALLY DETAINED IN APRIL 1977. THE COURT POINTED OUT IN ITS OPINION THAT THE EXPLANATION OFFERED BY THE MINISTRY OF INTERIOR FOR THE PEN DECREE AGAINST TIMERMAN REVOLVED AROUND THE INVESTIGATION UNDERTAKEN BY THE SPECIAL WAR COUNCIL OF HIS CONNECTIONS WITH THE GRAIVER-MONTONERO/DEALINGS, [redacted] SUBSEQUENTLY, THE SPECIAL WAR COUNCIL PUBLICLY ANNOUNCED THAT AFTER A THOROUGH INVESTIGATION, IT HAD FOUND THAT MR. TIMERMAN/(AND SOME [redacted] 25 OTHERS) HAD COMMITTED NO INDICTABLE OFFENSE. THE COURT STRESSED THAT IN ALL THE OTHER CASES WHICH HAD COME BEFORE IT ALLEGING ABUSES IN THE GOVERNMENT'S USE OF ITS EXECUTIVE DETENTION POWERS, THE GOVERNMENT HAD INFORMED THE COURT THAT IT CONSIDERED THAT THE PEN DETAINEE IN QUESTION WAS LINKED WITH SUBVERSIVE ACTIVITIES. HOWEVER, IN THE TIMERMAN CASE [redacted] A SPECIAL MILITARY TRIBUNAL HAD PUBLICLY STATED THAT MR. TIMERMAN

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WAS NOT CONNECTED WITH ANY SUBVERSIVE ACTIVITIES. THEREFORE, IT DID NOT APPEAR TO A MAJORITY OF THE COURT THAT THERE WAS A REASONABLE BASIS UNDER THE SPECIAL CONSTITUTIONAL STATE OF SIEGE PROVISIONS FOR THE CONTINUED DETENTION OF TIMERMAN. THE COURT THUS GRANTED THE HABEUS CORPUS PETITION WITH RESPECT TO THE DEPRIVATION OF MR.TIMERMAN'S LIBERTY BASED ON THE PEN DECREE ISSUED BY THE PRESIDENT ON APRIL 21, 1977.

2. THE ACTA INSTITUTIONAL OF JUNE 18, 1976 -----

IN THE ACTA INSTITUTIONAL, WHICH IN DE FACTO REVOLUTIONARY JURISPRUDENCE HAS THE EQUIVALENCE OF A CONSTITUTIONAL AMENDMENT, THE MILITARY JUNTA ASSUMED SPECIAL POWERS AND RESPONSIBILITIES TO JUDGE THE CONDUCT OF PERSONS WHO HAVE CAUSED DAMAGE TO THE HIGHER INTERESTS OF THE NATION. UNDER THE TERMS OF THE ACTA, ONCE THE JUNTA HAS DECIDED THAT SUCH VIOLATIONS HAVE BEEN COMMITTED, THE JUNTA HAS THE RIGHT TO ISSUE RESOLUTIONS PLACING THE PERSONS RESPONSIBLE UNDER THE ACTA AND APPLYING ANY OR ALL THE FOLLOWING MEASURES:

A) DEPRIVATION OF POLITICAL AND LABOR RIGHTS;

B) REVOCATION OF THE CITIZENSHIP OF NATIONALIZED ARGENTINES;

C) EXPULSION OF FOREIGNERS OR NATURALIZED ARGENTINES FROM THE COUNTRY;

D) PROHIBITION OF PERSONS FROM EXERCISING ANY PUBLIC DUTY, EMPLOYMENT OR COMMISSION

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E) CONFINEMENT OF PERSONS IN A PLACE TO BE DETERMINED BY THE NATIONAL EXECUTIVE POWER (BEGIN UNDERLINING) WHILE THESE PERSONS ARE AT ITS DISPOSITION (END UNDERLINING) AND PROHIBITING THE ADMINISTRATION OR DISPOSAL OF A PERSON'S ASSETS UNTIL SUCH TIME AS THE LEGITIMACY OF THE ADQUISITION OF THESE ASSETS HAS BEEN JUSTIFIED AND PROHIBITING A PERSON FROM PRACTICING THEIR [redacted] LEGALLY LICENSED PROFESSION.

PURSUANT TO JUNTA RESOLUTION No. 6 OF OCTOBER 11, 1977, SUBSECTIONS (A),(D) and (E) WERE APPLIED TO JACOBO TIMERMAN. AT THAT TIME, JACOBO TIMERMAN WAS UNDER EXECUTIVE DETENTION PURSUANT TO THE APRIL 1977 DECREE.

3. TIMERMAN'S ARGUMENT ----- TIMERMAN'S LAWYER HAS INFORMED THE EMBASSY THAT HE PLANS TO ARGUE THAT [redacted] SECTION E OF THE ACTA INSTITUTIONAL IS NOT AN INDEPENDENT SOURCE OF DEPRIVATION OF LIBERTY UNDER ARGENTINE LAW FOR TWO REASONS. FIRST, THE EXPRESS LANGUAGE OF SECTION E (SEE UNDERLINING) GRANTS THE GOVERNMENT AUTHORITY TO INTERN A PERSON AT A PLACE OF THE GOVERNMENT'S CHOOSING WHILE (REPEAT WHILE) SUCH PERSON IS AT THE DISPOSITION OF THE PEN. SECONDLY, GRANTING THE GOVERNMENT EXCEPTIONAL DETENTION POWERS IS A SERIOUS ABRIDGEMENT OF [redacted] RIGHTS AND MUST STEM FROM A CLEAR CONSTITUTIONAL POWER. HE WILL THEN CONCLUDE THAT, [redacted], AS THE SUPREME COURT HAS FOUND THAT THERE IS NO REASONABLE BASIS FOR THE CONTINUATION OF THE PEN DECREE AGAINST TIMERMAN, [redacted],

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THERE IS NO BASIS FOR THE GOVERNMENT TO CONTINUE TO DEPRIVE TIMERMAN OF HIS LIBERTY UNDER SECTION E OF THE ACTA INSTITUTIONAL.

TIMERMAN'S LAWYER PLANS TO STRESS THAT THE GOVERNMENT'S RIGHT TO DEPRIVE PERSONS OF LIBERTY IS AN EXCEPTIONAL POWER DERIVED ONLY FROM ITS STATE OF SIEGE POWERS UNDER ARTICLE 23/ OF THE CONSTITUTION. THE GOVERNMENT HAS NO INDEPENDENT CONSTITUTIONAL BASIS FOR DEPRIVING INDIVIDUALS OF THEIR LIBERTY BY ITS OWN EXECUTIVE ORDER EXCEPT FOR THE AUTHORITY STEMMING FROM ITS STATE OF SIEGE POWERS WHICH THE GOVERNMENT EXERCISES ONLY THROUGH PEN DECREES. IN SHORT, TIMERMAN'S LAWYER ARGUES IF THE GOVERNMENT HAS NO RIGHT TO HOLD A PERSON UNDER THE PEN, IT HAS NO RIGHT TO HOLD A PERSON UNDER THE ACTA.

4. COUNCIL ON PATRIMONIAL RESPONSIBILITY (CONAREPA)

PROCEEDINGS ---

THERE HAVE BEEN NO NEW DEVELOPMENTS REGARDING CONAREPA'S ADMINISTRATIVE REVIEW OF TIMERMAN'S ASSETS. AS PREVIOUSLY REPORTED, CONAREPA HAS REQUESTED ADDITIONAL FINANCIAL RECORDS AND INFORMATION ON THE FIRMS IN WHICH TIMERMAN HAD MAJOR FINANCIAL INTERESTS. COMPLETE FINANCIAL INFORMATION HAS BEEN SUPPLIED ON THE LA OPINION NEWSPAPER AND ITS PRINTING PLANT. BUT CONAREPA HAS REFUSED TO ACCEPT FINANCIAL INFORMATION ON THE TIMERMAN BOOK PRINTING OPERATION AS IT HAS NOT FORMALLY REQUESTED THE DATA.

DURING RECENT LUNCH MEETING WITH DATT JUST AFTER SUPREME COURT'S DECISION, SEVERAL CONAREPA BOARD AND SENIOR MEMBERS

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INDICATED THAT THEY STILL HAD MUCH MORE WORK TO DO REGARDING THE TIMERMAN MATTER.

4 TIMERMAN'S FAMILY IS CONFIDENT THAT THERE ARE NO IRREGULARITIES TO BE UNCOVERED AND CONTINUES TO PUSH FOR TIMERMAN'S RELEASE FROM DETENTION WHILE THE CONAREPA'S PROCEEDINGS CONTINUE.

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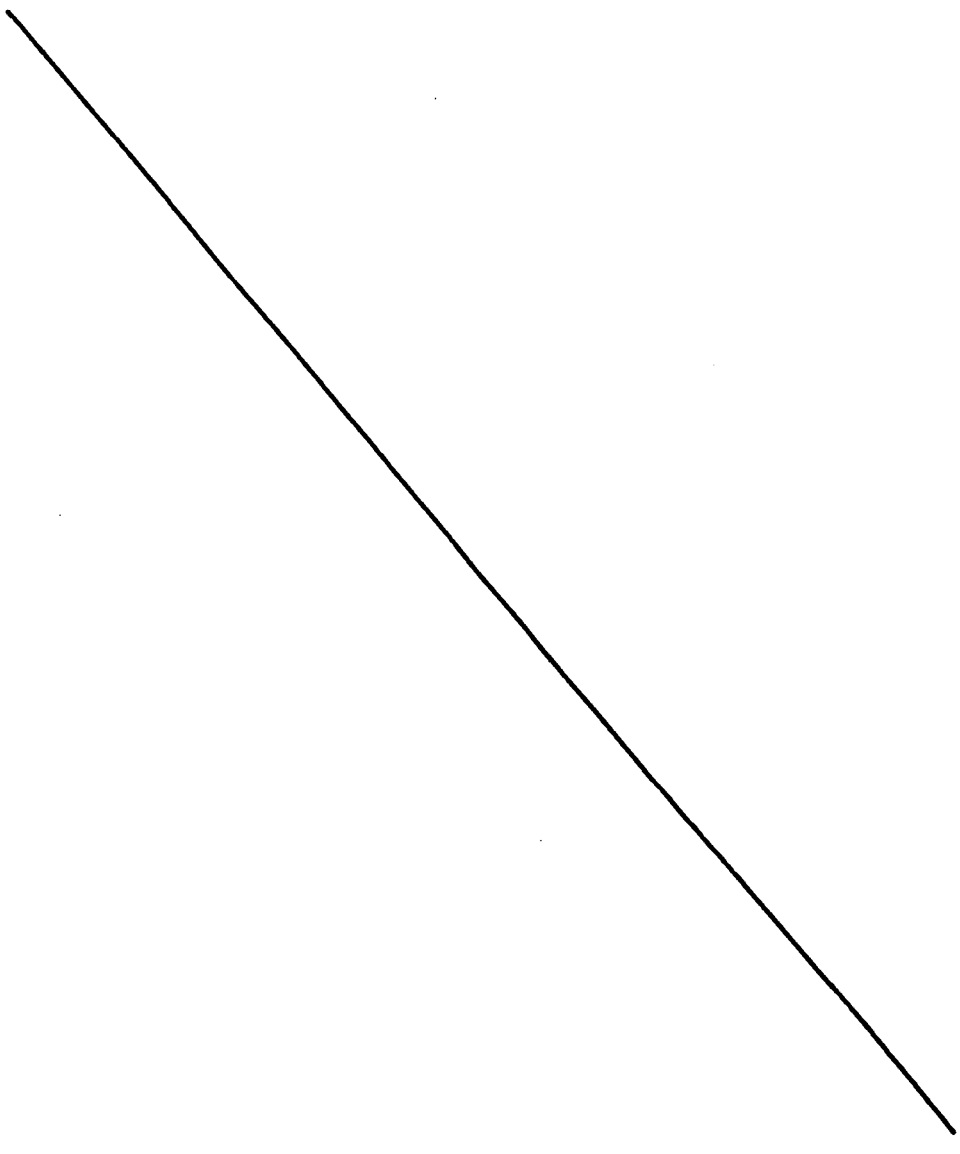

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IS BEING DONE IN SEVERAL OTHER CASES AT PRESENT.

5. GOA REACTION -----

JACOBO TIMERMAN TOLD THE EMBASSY IN A TELEPHONE CONVERSATION ON AUGUST 2ND THAT HE HAS RECEIVED NO WORD OF ANY GOVERNMENT (THIS WAS THE FIRST TIME WE HAVE EVEN GOTTEN THROUGH-TO TIMERMAN ON THE PHONE) REACTION TO THE SUPREME COURT DECISION. PRIOR TO THE JULY 31ST LAMBRUSCHINI BOMBING, DEPUTY NAVY SECRETARY GENERAL LUCHETTA TOLD POLOFF THAT ADMIRAL MASSERA PLANNED TO RAISE TIMERMAN'S CASE AT THE REGULAR JUNTA MEETING ON AUGUST 3. CLEARLY, THE GOVERNMENT HAS A HARD DECISION TO MAKE. TIMERMAN'S LEGAL CASE FOR HIS RELEASE AFTER THE SUPREME COURT'S DECISION IS EVEN STRONGER, ALTHOUGH ALL OBSERVERS AGREE THAT ANY DECISION REGARDING HIS RELEASE OR CONTINUED DETENTION WILL BE STRICTLY POLITICAL. WHETHER THE LAMBRUSCHINI BOMBING WILL HAVE AN EFFECT IS NOT CLEAR, BUT IT COULD MAKE A DECISION FAVORABLE TO TIMERMAN MORE DIFFICULT AT LEAST IN THE NEAR TERM.

6. PUBLIC REACTION -----

THE GENERAL PUBLIC REACTION TO THE SUPREME COURT'S DECISION HAS BEEN POSITIVE. THE OPTIMISTIC OBSERVERS BELIEVE THAT THE TIMERMAN DECISION SIGNALS A NEW ELEMENT OF STRENGTH IN THE SUPREME COURT. MORE REALISTIC OBSERVERS WHILE SEEING THE DECISION AS A DEFINITE PLUS, POINT OUT THAT THE TIMERMAN CASE WAS UNIQUE AS TIMERMAN IS THE ONLY DETAINED PEN PRISONER IN THE COUNTRY WHO HAS RECEIVED A CLEAN BILL OF HEALTH FROM A MILITARY TRIBUNAL. THE LATTER VIEW WAS STRENGHTHENED ON AUGUST FIRST WHEN THE SUPREME COURT ANNOUNCED ITS SECOND REJECTION OF

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THE PERMANENT ASSEMBLY'S DIRECT APPEAL FOR THE JUDICIARY TO INTERVENE IN ESTABLISHING THE WHEREABOUTS OF OVER 100 PERSONS ILLEGALLY DETAINED (i.e.DISAPPEARED) PRESUMABLY BY THE EXECUTIVE.

7. EMBASSY COMMENT -----

WE DOUBT THAT THE TIMERMAN'S DECISION WILL BE OF VALUE LEGALLY TO THE OTHER PEN DETAINEES. NOR ARE WE OPTIMISTIC THAT THE GOA WILL COMPLY WITH THE COURT DIRECTIVE TO REMOVE TIMERMAN FROM PEN/ACTA DETENTION. THE MOST LIKELY SCENARIO IS FOR Extended LITIGATION WHILE THE NEW VIDELA ADMINISTRATION WORKS ITS WAY TOWARDS MAKING THE TOUGH POLITICAL DECISION TO ALLOW TIMERMAN TO LEAVE ARGENTINA. AT A CONVENIENT TIME, WE SHALL TRY TO GET A READING FROM HARGUINDEGUY.

8. ACTION REQUEST -- APPRECIATE IF DEPARTMENT WOULD BRIEF CONGRESSMEN CONTE AND GILMAN, RABBI ROSENTHAL OF ADL, STAFF MEMBERS IN THE OFFICES OF SENATORS HAYAKAWA AND CRANSTON REGARDING STATE OF PLAY OF TIMERMAN CASE.

CASTRO

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